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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE: SPARACINO, Gina M.)
) APPEAL NO. _____
SERIAL NO: 10/723,000)
)
FOR: AUXILIARY STIRRUP FOR SADDLE)
) BRIEF ON APPEAL
FILED: November 26, 2003)
)
GROUP ART UNIT: 3643)

To the Commissioner of Patents and Trademarks
Mail Code Appeal Brief - Patents
P. O. Box 1450
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Dear Sirs:

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I. INTRODUCTION

This is an appeal of the Final Rejection dated August 31, 2004, finally rejecting claims 1-18. The appealed claims 1-18 are set forth in an attached Appendix.

II. REAL PARTY OF INTEREST

The real party of interest is the Applicant, Gina M. Sparacino.

III. RELATED APPEALS AND INTERFERENCES

None.

IV. STATUS OF CLAIMS

The claims pending on appeal are claims 1-18.

V. STATUS OF AMENDMENTS

Applicant's Amendment dated November 30, 2004 filed after the Final Rejection is believed to be entered, since there were no changes to the claims.

VI. SUMMARY OF CLAIMED SUBJECT MATTER

The invention is directed towards an improved horse saddle having a primary stirrup hanging downwardly from the saddle seat, and an auxiliary stirrup hanging downwardly from the seat behind and below the primary stirrup. The dual stirrups allow the rider to use both feet and legs in mounting the horse, with the right foot placed first in the auxiliary stirrup, and the left foot then placed in the primary stirrup as the rider steps up with the right foot in

the auxiliary stirrup. The mounting process uses two small steps, rather than one large step as in convention saddles which do not have the auxiliary stirrup behind the primary stirrup.

More particularly, independent claim 1 is directed towards an auxiliary saddle stirrup (22) for facilitating mounting of a horse having a saddle (10) secured thereon. The auxiliary saddle stirrup (22) comprises a strap having an upper end (24) and a lower end (26), with the upper end 24 being attachable to the saddle (10) at a location rearwardly from the primary stirrup (16) on the saddle (10). See Figures 1 and 3; Specification, page 3, lines 12-17. As further provided by claim 1, the auxiliary saddle stirrup 22 also includes a foot loop (28) on the lower end (26) of the strap so as to be positioned behind and below the primary stirrup (16). See Figures 1 and 3; Specification at page 3, lines 15-17. In other words, the auxiliary or secondary stirrup is to the right of the primary stirrup, as a rider faces the horse.

Independent claim 8 is directed towards a saddle (100, comprising a seat (12), a primary stirrup (16) hanging downwardly from the seat (12), and an auxiliary stirrup (22) hanging downwardly from the seat (12) behind and below the primary stirrup (16). See Figures 1 and 3; Specification at page 3, lines 9-17.

Independent claim 18 is directed towards a method for a rider to mount a horse having a saddle (10) secured thereto. The method of claim 18 requires the first step of placing the rider's right foot into a first stirrup (22) hanging from the saddle, and then stepping up on the first stirrup (22). The method then requires that the rider place his/her left foot into a second stirrup (16) hanging from the saddle (10), with the first stirrup (22) being behind and below the second stirrup (16), and without crossing the rider's legs. The next step required in claim

18 is stepping up on the second stirrup (16) and removing the right foot from the first stirrup (22). The last step of claim 18 is swinging the rider's right leg over the horse so that the rider is seated in the saddle (10). See Figure 3 and the Specification at page 3, lines 17-21, and page 4, lines 18-31.

VII. CONCISE STATEMENT LISTING GROUND OF REJECTION PRESENTED FOR REVIEW

Each of independent claims 1, 8 and 18 have been rejected under 35 U.S.C. § 103 as being unpatentable over the Seal, Patent No. 5,347,797. The depending claims have been rejected under § 103 as being obvious over Seal alone, or in combination with a secondary reference.

VIII. ARGUMENT

A. Independent Claims 1, 8 and 18 Distinguish Over the Seal '797 Patent

Independent claim 1 requires an auxiliary saddle stirrup "positioned behind and below the primary stirrup." Independent claim 8 similarly requires a saddle with "an auxiliary stirrup hanging downwardly from the seat behind and below the primary stirrup."

Independent method claim 18 requires a first step into a first stirrup behind and below the second stirrup, and a second step into the second stirrup without crossing the rider's legs.

These limitations are not met by the Seal patent.

In the Seal patented saddle, the auxiliary or second stirrup (5) is in front of the primary stirrup, as clearly seen in Figure 6 and 7. Thus, the primary and secondary stirrups of the Seal patent are arranged oppositely, or reverse of the primary and secondary stirrups of

claims 1, 8 and 18. The Examiner acknowledges such reversal of the primary, and secondary or auxiliary stirrups, but then concludes that it would be an obvious substitution of functional equivalents to place the auxiliary stirrup (5) of Seal behind the primary stirrup. The Examiner provides no teaching, suggestion, motivation, or evidence for such a conclusion, and cites no other references to overcome this deficiency of the Seal patent. The Examiner asserted in the first Office Action that the rearwardly mounted auxiliary or secondary strap of the present invention has no critical reason that would be better than mounting the auxiliary strap in front, as taught by the Seal patent. This assertion by the Examiner is incorrect.

As described in the Specification at page 4, lines 18-31,

"Thus, the auxiliary stirrup 22 provides a lift aid devised for mounting horses. The foot loop 28 provides an easy step up into the main stirrup 16. With the foot loop 28 located below and behind the main stirrup 16, a rider can face the horse for mounting, which can be quickly and easily accomplished without a crossover step or crossing the legs. (*Emphasis added*). The auxiliary stirrup 22 on the saddle 10 allows both feet to be used in the mounting of the horse. The auxiliary stirrup 22 and primary stirrup 16 allow the rider 30 to mount the horse in two small steps, rather than a big step as in a conventional saddle without the auxiliary stirrup 22. The improved saddle 10 with the auxiliary stirrup 22 enhances safety and enjoyment of horseback riding by overcoming the common physical limitations or barriers normally involved in mounting the horse using a conventional saddle. The improved saddle 10, with the auxiliary stirrup 22 also substantially reduces the skill, coordination, and strength otherwise required in mounting a horse with a conventional saddle. The auxiliary stirrup 22 is portable, collapsible, lightweight, weatherproof, and quickly and easily installed or removed from the saddle 10."

As seen in the illustration of the Seal patent stirrups in Figures 6, 7 and 8, the lower auxiliary stirrup (5) is to the left of the upper primary stirrup. The rider steps into the front or auxiliary stirrup with the right foot. Then, in an intermediate step between Figures 6 and 7,

the user necessarily **MUST** cross his left foot over the right foot in order to place the left foot into the rear primary stirrup to complete the mounting process. This crossover of the rider's legs is inherent in Seal, since the upper primary stirrup for the rider's left is to the right of the lower auxiliary stirrup that receives the right foot. This also results in the user searching for the primary stirrup blinded as to the left foot position. This is clearly seen as the Seal patent shows the user's head over the saddle and in no position to make visual contact when placing his left foot into the upper primary stirrup.

In sharp and distinct contrast, the auxiliary stirrup of the present invention prevents the precarious cross-legged position of the Seal patent by maintaining uncrossed legs. The low, rearward location of the auxiliary stirrup of the present invention allows the rider to easily mount the horse without crossing the right and left legs. In this position, the rider reacts effectively to critical events such as the horse walking or running off prematurely (which happens commonly). The rearward placement of the auxiliary stirrup of the present invention allows mounting of a horse without having to cross the rider's legs, as is apparent from Figure 3, making the process safer. If the rider had crossed legs (as in Seal) when the horse walks or runs off, serious consequences may result as the rider seeks to regain balance and to avoid a fall.

The Examiner has misconstrued the Seal patent, and her assertion that the Seal primary and secondary stirrups are equivalent to Applicant's primary and secondary stirrups, even though reversed in arrangement, is incorrect. Similarly, the Examiner's conclusion that the rider in Seal does not cross his or her legs when mounting the horse is erroneous.

The Examiner correctly states that the Seal saddle has a primary stirrup (10) and a secondary stirrup (5) which is located in front of the primary stirrup (10). In other words, the secondary stirrup (5) is to the left of the primary stirrup (10), as seen in Figure 6 of Seal. There is no disclosure in the Seal patent that the secondary stirrup (5) ever moves to a position behind or to the right of the primary stirrup (10). Thus, the rider's right foot in the secondary stirrup (5) is always to the left of the primary stirrup (10), which receives the rider's left foot. Therefore, the left hand secondary stirrup inherently and necessarily places the rider's right foot to the left of the primary stirrup (10) and the rider's left foot. The rider's left foot is to the right of his/her left foot when both feet are in the Seal stirrups. Thus, the rider's legs will cross when mounting the horse. The only way to preclude crossing of the legs, is for the rider to lean far enough the rear of the horse so that the right leg extends behind the primary stirrup (10) as is apparently shown in Seal Figure 7. However, such a mounting technique is awkward and unsafe. Rather, a rider normally should maintain his/her body in an upright or vertical alignment for good balance, and so as to allow the right leg to swing over the horse to complete the mounting. As seen in Figure 7 of Seal, the rider is leaning rearwardly, and thus does not have good balance. Also, as the rider leans rearwardly with his/her right foot in the auxiliary stirrup (5), the stirrup (5) will naturally swing forwardly towards the horse's front left leg, and possibly spook or scare the horse. If the horse responds by moving its left leg, the rider may fall. Furthermore, the rider in Figure 7 of Seal cannot swing his right leg over the horse while leaning to the rear with his upper body leaning over the horse.

As evidence of the differences between Applicant's saddle wherein the secondary stirrup is behind the primary stirrup, and the Seal patent wherein the secondary stirrup is in front of the primary stirrup, Applicant submitted to the Examiner a CD with a video. Applicant resubmits the same CD to the Board of Appeals with this Brief. This CD shows a rider mounting a horse using a saddle constructed in accordance with the Seal '797 patent, and mounting a horse using a second saddle constructed in accordance with the present invention.

In the first portion of the video, the secondary stirrup is mounted over the horn of the saddle, as shown in Figures 1 and 2 of Seal, such that the secondary stirrup hangs to the left of the primary stirrup, all in accordance with the Seal patent. As seen in the video, the rider's legs cross one another when mounting the horse using the Seal saddle.

In the second portion of the video, the saddle is constructed with the secondary stirrup hanging behind or to the right of the primary stirrup, in accordance with the present invention. As further shown in the video, when the rider mounts the horse using the saddle of the present invention, the rider's legs do not cross.

Thus, as seen in the video, the secondary stirrups of the Seal patent and of the present invention are not functionally equivalent, as suggested by the Examiner. By positioning the secondary stirrup behind the primary stirrup, as required in independent claims 1, 8 and 18, the rider's legs never cross during mounting. In comparison, with the Seal saddle, the rider's legs will inherently cross one another during mounting.

The Examiner correctly notes that the Seal patent is silent about the secondary stirrup being located rearwardly or behind the primary stirrup, as required by independent claims 1, 8 and 18. This difference is not taught or suggested anywhere in the prior art, as acknowledged by the Examiner in paragraph 5 of the final office action. The Examiner's conclusion that the secondary stirrups of the present invention and of the Seal saddle are functionally equivalent is unsupported by any evidence. Applicant's video clearly shows that this difference in structure provides a substantial difference in use or result between the present saddle and the Seal saddle. Since these differences are not taught or suggested by the prior art, the obviousness rejections of the claims cannot be maintained and must be withdrawn.

Much to Applicant's surprise, the Examiner informed Applicant's counsel in telephone conversations that she could not watch the video evidence submitted on the CD. Applicant then submitted individual frame shots from the video, with written comments added corresponding to the audio portion of the CD, and describing use of the saddle of the Seal patent and the Sparacino saddle of this application. Copies of the individual frame shots are also submitted to the Board with this Brief. The first 14 photos show the rider mounting a horse using the saddle of the Seal '797 patent (pages 1-4 of the photos). The last 10 photos (pages 5-7) show the rider mounting a horse using the Sparacino saddle of the present invention.

After reviewing the individual frames from the CD video, the Examiner asserted that she did not believe that the rider using the Seal saddle crossed the right and left legs, as shown in the CD frames, because she believed the right leg of the rider swings to the back of

the horse as shown in Figure 7. However, Applicant notes that in Figure 7 of Seal, that the secondary stirrup (5) and the rider's right foot in the stirrup are in the same position in both Figures 6 and 7, with no indication that the rider's right foot swings to the back of the horse, as suggested by the Examiner. This conclusion of the Examiner is not supported by the Seal patent.

It is clear from the CD video and the individual frames from the CD that the Seal saddle is not functionally equivalent to the saddle of the present invention. By placing the secondary stirrup in front of a primary stirrup, as in Seal, the rider necessarily must cross his or her legs while mounting the horse using the Seal saddle. While Figure 7 of Seal does not show the rider crossing his legs, such a drawing is not accurate and is unrealistic since it is clear that the right foot is to the left of the left foot. *Even if* the rider in Seal does not cross his legs, the Seal saddle is not functionally equivalent to the saddle of the present invention, since the Seal rider must lean substantially rearwardly in order to avoid crossing his legs. The rider does not remain upright in a position perpendicular to the ground, as is normally done for safely mounting a horse and as is done with the Sparacino saddle of the present invention. Also, in Seal, the rider faces away from the horse in placing the right foot in the secondary stirrup (5) as seen in Figure 6, which is also contrary to normal mounting methods and contrary to the Sparacino saddle of the present invention. Thus, the Seal patent is not functionally equivalent to the present invention, *even if* the rider does not cross his legs when mounting.

Thus, the Examiner's unsupported conclusion that the saddle of the Seal patent is functionally equivalent to the saddle of the present invention is erroneous for two reasons:

1. If the Seal rider remains upright during the mounting process, his legs necessarily must cross, since his right foot is initially placed in a stirrup to the left of the upper stirrup for his left foot; or
2. If the rider does not cross his legs during mounting, he must face away from the horse for the first step of his right foot into the front secondary stirrup, as seen in Figure 6, and then must lean substantially (and unsafely) rearwardly to avoid crossing of his legs, as seen in Figure 7.

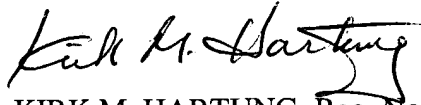
IX. CONCLUSION

Therefore, the Examiner's conclusion of functional equivalency is erroneous and the rejection of the claims based upon the Seal patent must be reversed.

For the above-stated reasons, it is submitted that the claims are in a condition for allowability. The decision of the Examiner, therefore, should be reversed and the case allowed.

Enclosed herein please find the Appeal Brief and required fee of \$250.00. If this amount is not correct, please consider this a request to debit or credit Deposit Account No. 26-0084 accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk M. Hartung". The signature is fluid and cursive, with a large, stylized "H" at the end.

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Enclosures: Appendix of claims, CD, Individual frame shots from the video



CLAIM APPENDIX

Claim 1 (Original): An auxiliary saddle stirrup for facilitating mounting of a horse having a saddle secured thereon, comprising:

a strap having an upper end and a lower end, the upper end being attachable to the saddle at a

location rearwardly remote from a primary stirrup on the saddle;

a foot loop on the lower end of the strap so as to be positioned behind and below the primary stirrup when the strap hangs down from the saddle.

Claim 2 (Original): The saddle stirrup of claim 1 wherein the strap has an adjustable length.

Claim 3 (Original): The saddle stirrup of claim 1 wherein the strap has at least two elongated members adjustably secured together so that the length of the strap may be altered.

Claim 4 (Original): The saddle stirrup of claim 3 further comprising a buckle to secure the elongated members together.

Claim 5 (Original): The saddle stirrup of claim 1 wherein the loop includes a friction surface to prevent slipping.

Claim 6 (Original): The saddle stirrup of claim 1 wherein the upper and lower ends each includes a snap to secure the ends together in a storage position.

Claim 7 (Original): The saddle stirrup of claim 1 wherein the upper and lower ends of the strap are adapted to be releasably connected together.

Claim 8 (Original): A saddle comprising:
a seat;
a primary stirrup hanging downwardly from the seat; and
an auxiliary stirrup hanging downwardly from the seat behind and below the primary stirrup.

Claim 9 (Original): The saddle of claim 8 further comprising a ring on the saddle behind the seat, the auxiliary stirrup being secured to the ring.

Claim 10 (Original): The saddle of claim 8 wherein the auxiliary stirrup has an adjustable length.

Claim 11 (Original): The saddle of claim 8 wherein the auxiliary stirrup has upper and lower ends adapted to be secured together in a storage position.

Claim 12 (Original): The saddle of claim 11 wherein each of the upper and lower ends includes a snap to snap the ends to one another.

Claim 13 (Original): The saddle of claim 8 wherein the auxiliary stirrup includes an elongated strap having an upper end and a lower end with a foot loop thereon.

Claim 14 (Original): The saddle stirrup of claim 13 wherein the strap has at least two elongated members adjustably secured together so that the length of the strap may be altered.

Claim 15 (Original): The saddle stirrup of claim 14 further comprising a buckle to secure the elongated members together.

Claim 16 (Original): The saddle stirrup of claim 13 wherein the loop includes a friction surface to prevent slipping.

Claim 17 (Original): The saddle of claim 13 wherein the upper end of the strap is releasably connected to the saddle seat.

Claim 18 (Original): A method for a rider to mount a horse having a saddle secured thereto, comprising:

placing the rider's right foot into a first stirrup hanging from the saddle; then

stepping up on the first stirrup; then

placing the rider's left foot into a second stirrup hanging from the saddle, the first stirrup

being behind and below the second stirrup, and without crossing the rider's legs; then

stepping up on the second stirrup,

removing the right foot from the first stirrup; and then

swinging the rider's right leg over the horse so that the rider is seated in the saddle.

EVIDENCE APPENDIX

1. Saddlestep Demo CD (submitted to PTO with Amendment After Final dated November 30, 2004).
2. Photos/Frame captures from CD (submitted to Examiner by Email dated January 26, 2005).